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Founded December 29, 1899

TCU

Transportation Communications International Union

Challenging the future with over a century of pride!

Robert A. Scardelletti, *International President*
LEGAL DEPARTMENT
Mitchell M. Kraus, *General Counsel*
Christopher J. Tully, *Assistant General Counsel*

May 16, 2000

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Mr. Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, NW, Suite 700
Washington, DC 20423-0001

Re: Major Rail Consolidation Procedures
STB Ex Parte No. 582 (Sub-No. 1)

Dear Mr. Williams:

Enclosed please find an original and twenty-five copies of the Comments of Transportation•Communications International Union, International Brotherhood of Electrical Workers, American Train Dispatchers Department-BLE, and International Association of Machinists and Aerospace Workers in the above-captioned matter. Copies of been mailed to all Parties of Record. I am also enclosing a diskette formatted in WordPerfect 9.0.

Thank you for your attention to this matter.

Very truly yours,

Mitchell Kraus

Mitchell M. Kraus
General Counsel

MMK:fm
Enclosures

◆ 3 Research Place ◆ Rockville, Maryland 20850-3279 ◆
Phone—301-948-4910 ◆ FAX—301-330-7662 ◆ Website—www.tcunion.org

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**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.**

STB Ex Parte No. 582 (Sub-No. 1)

MAJOR RAIL CONSOLIDATION PROCEDURES

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Office of the Secretary

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**COMMENTS OF
TRANSPORTATION•COMMUNICATIONS INTERNATIONAL UNION (TCU),
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (IBEW),
AMERICAN TRAIN DISPATCHERS DEPARTMENT-BLE (ATDD),
AND INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS (IAM)**

Introduction

In its Order of March 31, 2000, this Board requested comments regarding its merger regulations, noting that these regulations were adopted after passage of the Staggers Act of 1980 in response to widespread financial distress among our nation's rail carriers, deteriorating service levels, and excess capacity. Clearly, these conditions have changed, and the issue is no longer the need to "rationalize" the industry's structure by eliminating excess capacity but, rather, the issue is insufficient capacity to meet demand and relieve "bottlenecks." Any future merger of Class I's will likely result in the creation of transcontinental lines. Given the service difficulties encountered by the Union Pacific after its merger with the Southern Pacific, as well as those encountered after the Conrail merger, it is fair to question whether the claimed public benefits from future mergers will prove illusory.

Rail labor has a great stake in these hearings. The Interstate Commerce Act has recognized that rail consolidations impose a heavy burden on rail employees, and the Interstate Commerce Commission devised a series of labor protections to attempt to assure the fair treatment of employees. This Board's Order of March 31, 2000, solicited comments concerning the adequacy of the current labor protective conditions for a restructured industry and the prospect of transcontinental mergers.

The above unions are the exclusive representatives for the employees employed by Class I carriers in the clerical, carmen, electrician, machinist and train dispatcher crafts and classes. Each has joined in the comments filed by the Transportation Trades Department, AFL-CIO (TTD) and fully endorses the views expressed therein. They offer these supplemental comments only on the issue of "cram down."[1]

TTD has urged that the Board abandon "cram down" entirely, leaving carriers to rely on the Washington Job Protective Agreement (WJPA), and other collective bargaining agreements, as the sole basis to permit modification of existing agreements. While we

[1] As recognized in the Board's March 31 order, "cram-down" is the shorthand means of referring to post-merger changes in collective bargaining agreements under the auspices of 49 U.S.C. § 11321(a) and/or 11326, and/or Article I, Section 4 of the New York Dock labor conditions.

fully support those views, we suggest, alternatively, in the event that the Board is unwilling to abandon "cram down" entirely, that it adopt the conditions outlined herein to govern its future use. (Exhibit A.) These conditions strengthen the protection to employees we represent from the loss of collectively bargained benefits, while permitting the limited use of "cram down."

We will avoid recounting the history of the development of this doctrine, which is addressed in TTD's comments as well as the Board's decision in Carmen III.[2] We limit our discussion to demonstrate that the adoption of our proposal will largely remove the Board from regulating labor relations. Our proposal recognizes that carriers may have interests in operating coordinated facilities under a uniform collective bargaining agreement, but prevents carriers from using "cram down" as a means of gaining advantage by selectively eliminating those agreements and/or agreement provisions, which are most beneficial to employees. Under our proposal, the labor organization will bear the onus of selecting a single agreement, and uniformity will thereby be achieved. Carriers can obtain changes in the chosen agreement only (1) in the event that the agreements selected by two or more labor

[2] CSX Corporation-Control-Chessie System, Inc. and Seaboard Coast Line Industries, Inc., STB Fin. Docket No. 28905 (Sub-No. 22) (Arbitration Review) and Norfolk Southern Corporation-Control-Norfolk & Western Railway Company and Southern Railway Company, STB Fin. Docket No. 29430 (Sub-No. 20) (Arbitration Review) (September 22, 1998).

organizations create patent, significant inefficiencies in the manner they interrelate - for example, two organizations pick agreements causing a direct conflict in work jurisdictions; or (2) to the extent that the work jurisdiction rules do not permit employees to perform work throughout the "consolidated" or "coordinated" territory.

Many of the terms in our proposal are also contained in an agreement reached by the United Transportation Union (UTU) and the National Carriers Conference Committee (NCCC) earlier this year. (Exhibit B.) That is because the same basic proposal has been under discussion between rail labor and the NCCC for some time. While progress was made, negotiations ultimately faltered. We emphasize that "cram down" affects different crafts differently, and that our proposal does not address this issue for all crafts.

Our proposal is fully consistent with the standards established by the Board in Carmen III. In that case the Board adopted the holding of the D.C. Circuit Court of Appeals finding that it must be established that "cram down" is necessary to obtain public transportation benefits from the underlying transaction. However, it cannot be used "merely to transfer wealth from employees to their employer." RLEA v. ICC, 987 F.2d 806, 815 (D.C. Cir. 1993). The Board further held that arbitrators had a responsibility "to reconcile the operational needs of the transaction with the need to preserve pre-transaction arrangements." Carmen III at 25 (quoting Fox Valley & Western Ltd.-Exemption Acquisition and Operation-Certain Lines of Green Bay and Western Railroad Corporation and the Ahnapee & Western Railway Company (Arbitration Review), STB Fin. Docket No 32035 (Sub-Nos. 2-6), at 3. "Cram down" may be used only where "clearly necessary to make the merged entity operate efficiently as a unified system rather than as two separate entities." Id.

Our proposal permits the carrier to obtain those efficiencies arguably necessary to attain public transportation benefits by permitting it to operate at a location where work has been consolidated or coordinated under a single collective bargaining agreement. Thus, carriers would not be forced to employ a work force at the same facility under two separate agreements. However, under our proposal the organization, not the carrier, selects the applicable agreement. In this way, the carrier is prevented from using the transactional authority granted by the Board to gain economic benefit at the expense of the employees by selecting the inferior agreement. Such overreaching cannot be characterized as being related to any need to secure efficiencies from the merger, but rather as merely the transfer of wealth from employees to the carrier, a process specifically rejected by the D.C. Circuit Court of Appeals and this Board.

In addition to protecting employees from carrier abuse of the Board's override authority, our proposal removes the Board from regulating labor relations through its "cram down" authority. We would respectfully submit that the Board is ill-equipped to play this role, and its reliance on arbitrators to parse through the complexities of rail agreements does not resolve its lack of labor relations expertise. Unfortunately, arbitrators have had difficulty in applying the abstract standards established in Carmen III. All too frequently they have paid more attention to the outcome of Board decisions rather than the Board's reasoning. Since virtually all of the cases in which the Board has reversed the arbitrator have favored the carrier, the unstated but clear message is that the carrier wins, regardless of the standards.[3]

We suggest that the approach taken in our proposal is an improvement over Carmen III because it does not rely on arbitrators to use Solomon-like wisdom to balance the divergent interests of

[3] A particularly egregious example of this tendency may be found in Arbitrator Fredenberger's award in Norfolk Southern Railway Co., CSX Transportation and Consolidate Rail Corporation and Brotherhood of Maintenance of Way Employees, et al. In that case, the arbitrator - contrary to the principles laid out in Carmen III - effectively ignored any discussion of the alleged inefficiencies of particular provisions of the Conrail agreement, and held instead that only a total replacement of the one agreement with another would afford the necessary efficiencies. BMWE appealed this award to the Board, but reached a settlement prior to the Board's considering the merits of the appeal.

the parties.[4] It removes the Board from regulating labor relations and offers a solution with clear, predictable results.

The Proposal

To the extent our proposal differs from the UTU/NCCC agreement, we have so indicated by using bold type. Both the UTU agreement and our proposal acknowledge that the procedures contained therein will not apply to implementing agreements already in place, whether reached through negotiations or arbitration.

The first section of our proposal deals with consolidation or coordination. Section 1 uses the WJPA definition of these terms. It makes clear that a consolidation or coordination does not include an attempt to impose a system-wide collective bargaining agreement or the abrogation of an existing collective bargaining agreement in its entirety. Such goals simply cannot be obtained under our proposal, and we would submit that such goals are not obtainable under Carmen III when properly applied. Section 1 further states that employees affected by a consolidation shall retain their seniority in their former seniority territory. They

[4] For similar cases demonstrating the difficulty of applying abstract concepts to "cram down," see BMWE and Union Pacific (Myers, 1997), vacated Union Pacific-Control-Southern Pacific (Arbitration Review), STB Fin. Docket No. 32760 (Sub-No. 25) (December 9, 1998); and UTU and Union Pacific (Yost 1997), aff'd in part, rev'd in part, Union Pacific-Conrol-Southern Pacific (Arbitration Review), STB Fin. Docket No. 32760 (Sub-No. 22) (June 26, 1997).

shall be permitted to exhaust all seniority at their home location and not be forced assigned to a new location.[5]

Section 2 states that, when work subject to a consolidation or coordination is covered by two or more collective bargaining agreements, the organization may choose which will be applicable. This is the heart of our proposal, as well as the UTU/NCCC agreement, and we believe it is fully supported by the D.C. Circuit's view, subsequently adopted by the Board, that "cram down" is not to be used as a means of transferring wealth from the employees to the carrier. In providing that the organization makes the selection, our proposal effectively prevents such transfer of wealth, while providing for a means to secure a single agreement for the consolidated/coordinated facility.

The rest of Section 2 established a procedure for an arbitrator to select the applicable agreement, in the event that the union is unable to do so.[6]

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[5] The issue whether an employee is entitled to a displacement allowance when he exercises seniority to a lower compensated position at his home location is pending before the Board in Transportation•Communications International Union, Norfolk & Western Railway Company, Norfolk Southern Railway Company (Arbitration Review), STB Finance Docket No. 29430 (Sub-No. 21), and it is addressed in the TTD brief.

[6] Such a selection could pit groups within the union against each other. Our proposal recognizes that the union may not be able to resolve such internal disputes. In such an event, an arbitrator decides which agreement applies.

Section 3 recognizes that more than one labor organization may be affected by a consolidation/coordination and that it is conceivable that the agreements they might select would together create significant inefficiencies that did not previously exist. For example, the agreements they select might each give each union exclusive jurisdiction over the same type of work. Section 3 provides a procedure for resolving such conflicts.

Section 4 focuses on the interaction between our proposal and New York Dock protections. It provides that, in the event the Organization selects a collective bargaining agreement with lower wage rates, that choice is not to be treated as a decision by affected employees to voluntarily place themselves in a worse position regarding their compensation. Therefore, employees whose pay is reduced as a result would be eligible for a displacement allowance under New York Dock.

Section 5 states that a collective bargaining agreement selected under Section 3 may be modified to the extent that work jurisdiction rules do not permit employees to perform work in the "consolidated" or "coordinated" territory.

Section 6 establishes a procedure for the integration of seniority rosters in "consolidated" or "coordinated" locations. It states that the carrier will defer to a seniority integration plan devised by the involved labor organization(s) so long as it meets three criteria: (1) it will not be a violation of law or present undue legal exposure; (2) it will not be unduly administratively burdensome, impractical or costly; and (3) it would not create a significant impediment to carrying out the consolidation or coordination. In the event that the carrier objects to the organization(s)' seniority integration plan, then the carrier must establish before an arbitrator that the organization(s)' plan does not meet one of these criteria by clear and convincing evidence. If the carrier meets this burden, the arbitrator is then authorized to devise the seniority integration plan.

Sections 1 through 5 are nearly identical to the UTU/NCCC agreement. Section 6 differs from the comparable provision in the UTU/NCCC agreement (See Exhibit B, "Consolidation or Coordination" Section 5(b)) in that said agreement permits modification of seniority boundaries "as necessary." Our proposal takes a different tact, avoiding the elusive term "as necessary." Our proposal states that the carrier must accept the union(s)' seniority plan, unless it fails to meet the specific criteria described above. We believe that this approach is less likely to result in disputes and provides more concrete standards to apply in the event the parties are unable to reach agreement.

We take a different approach than the UTU agreement on transfers of work. We note that this issue largely affects the non-operating, rather than the operating crafts. While the UTU/NCCC agreement has general language on this issue, both the

NCCC and UTU recognized that this question had to be ultimately resolved with the non-ops.

There is no bright dividing line between "coordinations" or "consolidations" and transfer of work. Virtually all transfers of work include a consolidation. A "coordination" or "consolidation" involves the co-mingling of work formerly performed by two separate carriers under separate collective bargaining agreements. Such co-mingling of work typically also involves the integration of seniority of the employees performing the co-mingled work. A transfer of work involves the movement of work from one location to another.

In practice, a transfer of work virtually always involves a coordination. For example, when clerical work was transferred from Conrail's Philadelphia General Office to the NS' General Office in Atlanta, the transferred Conrail work was consolidated or coordinated with the NS clerical work already being performed in Atlanta. Such work transfers often, but not always, involve the transfer of employees.

In the recent round of Class I mergers, work transfers involving the train dispatching and clerical crafts have principally, although not exclusively, involved the consolidation of central offices on what had formerly been two separate railroads. Since work transfers are implemented in order to consolidate work, such transfers raise the same policy issues as "coordinations" or "consolidations" that are discussed above. Accordingly, the issues of "cram down" involving work transfers should be subject to the same provisions governing consolidations.

For example, when UP transferred what had been SP clerical work in San Francisco to UP's General Office in Omaha, a transaction involving the transfer of hundreds of employees, the SP work was co-mingled or coordinated with the UP work being performed in Omaha. Under our proposal, the union, not the carrier, would select either the SP or the UP agreement to cover the coordinated work in Omaha.[7] This outcome is consistent with the UTU/NCCC agreement covering coordinations.

Notwithstanding, we acknowledge that such a result is contrary to the position adhered to by most NYD arbitrators that when work is transferred, the agreement applicable to the carrier controlling the work at the receiving location will apply.[8] As we noted above,

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[7] As noted above, our proposal is not intended to undo existing implementing agreements already in place such as the master implementing agreements between TCU/UP, and TCU/CSX/NS/Conrail. These examples are offered for illustrative purposes only.

[8] By contrast, in conjunction with the Southern Pacific/DRGW merger, when SP transferred train dispatching from Texas and California to Denver, Colorado, where it was consolidated with a much smaller DRGW train dispatching operation, the <u>New York Dock</u> arbitrator held that the separate agreements that covered the three groups of dispatchers "shall remain in effect, and shall continue to cover the Dispatchers whom they covered prior to the coordination to the new, dispatching center at Denver, until the [parties] reach a single collective bargaining agreement to cover all Dispatchers at the new coordinated facility." <u>Rio Grande Industries, Inc., SPTC Holding Inc and the Denver & Rio Grande</u>

our view that the labor organization should select the applicable agreement is consistent with the treatment given "consolidations" and "coordinations" in the UTU/NCCC agreement. The policy reasons supporting this resolution are no different when work is transferred and then consolidated.

It is possible that only a minority of the employees working at the coordinated facility will have transferred from a location where they worked under a different collective bargaining agreement. Conversely, there may be occasions where a majority at the coordinated facility transferred from a location where they worked under a different agreement. In either event, the union, not the carrier, should select the single agreement that will be applicable at the receiving location.

Conclusion

As noted above, each of the unions filing herein joins in the Comments filed by TTD and specifically urges that the STB abandon the use of "cram down." In the event that the Board rejects that position, then we offer this alternative which fully meets any carrier-claimed needs based on efficiency, while protecting employees from having "cram down" used as a means of transferring wealth at their expense. This proposal is similar to the UTU/NCCC

Western Railroad Company - Southern Pacific Transportation Company vs. Brotherhood of Locomotive Engineers - ATDD Division (1994)(Suntrup, arbitrator).

agreement but includes modifications to reflect the differing issues confronting the non-operating crafts.

Respectfully submitted,

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Dispatchers Department-BLE, and
International Association
of Machinists and Aerospace
Workers

Dated: May 16, 2000

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Comments of Transportation•Communications International Union, International Brotherhood of Electrical Workers, American Train Dispatchers Department-BLE, and International Association of Machinists and Aerospace Workers was mailed this 16th day of May, 2000, via U. S. Mail, postage prepaid, to all Parties of Record.

Mitchell Kraus

Mitchell M. Kraus

TCU, IBEW, ATDD AND IAM PROPOSED CONDITIONS
REGULATING THE USE OF "CRAM DOWN"

Consolidation or Coordination

1. A consolidation or coordination is an operational change necessary to unify, consolidate, merge or pool, in whole or in part the facilities or any of the operations or services previously performed by two or more rail Carriers (or former rail carriers) through such separate facilities. **A consolidation or coordination does not include changes such as the imposition of a system-wide collective bargaining agreement or the abrogation of an entire existing collective bargaining agreement. Employees affected by a consolidation or coordination shall not lose their seniority date on any territory where they previously held seniority and they shall be permitted to exercise such seniority. However, employees cannot be forced to a new location until they exhaust all seniority at their home location. Nothing in this agreement shall be deemed to change the obligations of an employee to exercise seniority for purposes of protective benefits.**

Exhibit A

2. Where the work **subject to** a Consolidation or Coordination is covered by two or more Collective Bargaining Agreements, the Organization(s) may choose (from among those two or more agreements) which Collective Bargaining Agreement will apply to the Consolidation or Coordination. If the union fails to select a single Collective Bargaining Agreement within the time frame for negotiations contained in the New York Dock conditions, the single agreement to apply shall be determined by the Arbitrator **pursuant to Section 4**. In making such determination, the arbitrator shall choose the agreement most beneficial to the employees involved as to rates of pay, rules and working conditions. **The Carrier(s) shall be permitted to attend the arbitration in order to answer questions presented by the Arbitrator; however the Carrier(s) shall not have the status of a party to the proceeding and will not be permitted to file a written submission or present argument to the Arbitrator.**

3. In situations where the Collective Bargaining Agreements chosen by two or more Organizations contain inconsistent provisions that would create **significant** inefficiencies in the operation which did not exist previously, the Organizations involved shall meet and confer in good

faith to resolve the inconsistencies. **For the purposes of this Section, an "inefficiency" shall not include an arrangement between Organizations providing for a single representative, including multiple Organizations, under a single collective bargaining agreement.** If the involved Organizations fail to resolve the inconsistencies within the time frame for negotiations contained in the New York Dock conditions, the **Section 4** Arbitrator shall resolve such inconsistencies by choosing the agreement provision(s) most beneficial to the employees involved as to rates of pay, rules and working conditions, including crew consist agreements.

4. For purposes of determining compensation protection, an Organization's selection of a collective bargaining agreement with lower wage rates shall not be treated as a decision by affected employees to "voluntarily" place themselves in a worse position regarding their compensation.

5. The Collective Bargaining Agreement selected by the Organization(s) or Arbitrator may only be modified to the extent that the selected agreement does not permit

employees subject to it to perform work throughout the "consolidated" or "coordinated" territory.

6. **The integration of seniority rosters involved in the "consolidation" or "coordination" shall be accomplished by agreement between the involved Carrier(s) and Organization(s), provided that the Carrier(s) will defer to an integration plan devised by the Organization(s) unless it can be shown by clear and convincing evidence that such plan (1) would violate the law or present the carrier with undue legal exposure; (2) would be unduly administratively burdensome, impractical or costly; or (3) would create a significant impediment to carrying out the "consolidation" or "coordination." Any dispute over the Carrier(s)' refusal to accept an integration plan devised by the Organization(s) shall be resolved by Section 4 arbitration.**

7. **The selection of collective bargaining agreements and seniority integration methods in situations where work and/or positions (and/or employees) are transferred from one location to another covered by a different collective bargaining agreement shall be made in accordance with the**

same provisions set forth above governing coordinations or consolidations.

Revised Standards for Preemption of Collective Bargaining Agreements for Transactions Initiated Pursuant to Section 11323 of the Interstate Commerce Act

This agreement between ___UTU___ and the signatory Class I Carriers is intended to set forth standards to be applied by Class I railroads and the involved labor Organizations when the Carriers seek to override or modify Collective Bargaining Agreements in the implementation of consolidations, mergers, and acquisitions of control ("Major Transactions") pursuant to Section 11323 of the Interstate Commerce Act. This agreement does not apply when a Carrier is not seeking to override or modify Collective Bargaining Agreements in such circumstances.

Conditions

1. The procedures set forth herein will be prescribed by statute and not as a condition imposed and administered by the Surface Transportation Board, or any successor agency. The terms of this agreement will become null and void when enacted into law. However, pending enactment of such statutory language, the Class I railroads signatory to this agreement agree to be bound by its terms and conditions as they relate to any notices served pursuant to either protective conditions voluntarily reached by the parties or imposed by the Surface Transportation Board in the approval of a "Major Transaction" where the applicant Carriers are seeking to override or modify an existing Collective Bargaining Agreement.

2. The terms of this agreement when enacted in statutory form will not be subject to the current exemption provision in the Interstate Commerce Act, 49 U.S.C. Section 11321(a), or any future exemption provisions, and the parties will agree on appropriate statutory language to that effect. Until enactment of such statutory language, the Class I carriers signatory to this agreement agree that they will not assert such exemption authority.

3. Except as provided in paragraph 4 below, the procedures set forth in this agreement will apply to any notice for an implementing agreement by any carrier party that seeks to override or modify Collective Bargaining Agreements, whether under existing merger, control or acquisition authority or any such authority sought or granted in the future by the STB or any successor agency.

4. The procedures set forth herein do not apply to any implementing agreements established prior to the date of this Agreement as a consequence of voluntary negotiations or arbitration pursuant to protective conditions imposed by the ICC or STB. Such implementing agreements will be conclusive and continue in effect as to all issues resolved, including provisions for procedures to be used in subsequent consolidations, coordinations or transfers of work and/or employees. Such provisions, however, shall not be used to change any Collective Bargaining Agreement unless specifically provided therein. A list of implementing agreements containing provisions that provide for changes in Collective Bargaining Agreements is attached as Addendum A. If an implementing agreement is, by oversight, not listed in Addendum A, it will subsequently be added to the list, although the carrier has the burden of showing that such addition is appropriate.

Exhibit B

5. This agreement only addresses the current authority of the STB to override or modify collective bargaining agreements in implementing issues for major transactions. This agreement is not intended to alter or change the substantive provisions of existing protective benefit agreements or in any way address or restrict the authority of the STB to impose protective conditions in major transactions.

6. The provisions of this agreement shall not deprive a Carrier of any right to take any action allowed under any applicable existing or future Collective Bargaining Agreements, nor shall the Organization be deprived of asserting that no such right exists, all subject to any dispute resolution mechanisms provided in such agreements or under the Railway Labor Act itself.

7. This agreement will not bar the parties, by mutual agreement, from addressing any matter contained in this agreement in an alternative manner.

Consolidation or Coordination

1. A Consolidation or Coordination is a change that unifies, consolidates, merges, or pools, in whole or in part, the facilities, equipment, or employees of two or more rail Carriers (or former rail carriers), or any of the operations or services performed by such Carriers. A Consolidation or Coordination does not include a "Transfer of Work".

2. Where the work embraced by a Consolidation or Coordination is subject to two or more Collective Bargaining Agreements, the Organization may choose (from among those two or more agreements) which Collective Bargaining Agreement will apply to the Consolidation or Coordination. If the union fails to select a single Collective Bargaining Agreement within the time frame for negotiations contained in the New York Dock conditions, the single agreement to apply shall be determined by the Arbitrator. In making such determination, the arbitrator shall choose the agreement most beneficial to the employees involved as to rates of pay, rules and working conditions, including crew consist agreements.

3. In situations where the Collective Bargaining Agreements chosen by two or more Organizations contain inconsistent provisions that would create inefficiencies in the operation, which did not exist previously, the Organizations involved shall coordinate their choices to eliminate such inconsistencies. If the involved Organizations fail to do so within the time frame for negotiations contained in the New York Dock conditions, the Arbitrator shall resolve such inconsistencies. In making such determination, the arbitrator shall choose the agreement most beneficial to the employees involved as to rates of pay, rules and working conditions, including crew consist agreements

4. For purposes of determining compensation protection, an Organization's selection of a Collective Bargaining Agreement with lower wage rates shall not be treated as a decision by affected employees to "voluntarily" place themselves on lower rated positions.

5. The Collective Bargaining Agreement selected by the Organization or Arbitrator may only be modified as follows:

a) Work Jurisdiction Rules shall be subject to modification only to the extent that the selected agreement does not permit employees to perform work throughout the Consolidated or Coordinated territory.

b) Seniority District/Territory Boundaries shall be subject to modification as necessary to permit the Consolidation or Coordination. Such modification shall not, however, cause employees who were in service on the effective date of the Consolidation or Coordination to lose their seniority date on any territory where they previously held seniority and they shall be permitted to exercise such seniority. However, employees cannot be forced to a new location until they exhaust all seniority at their home location. Nothing in this agreement shall be deemed to change the obligations of an employee to exercise seniority for purposes of protective benefits.

c) Provisions relating to seniority of all employees involved in the Consolidation or Coordination shall be integrated by agreement between the involved Carrier(s) and Organization(s) with disputes to be resolved by the Arbitrator. Train Service Rosters and Engine Service Rosters shall not be consolidated with each other. [Applicable to Operating Crafts Only.]

Transfer of Work

1. A Transfer of Work is where work and/or positions (and/or employees) are transferred from one location to another.

2. In the case of a Transfer of Work, the Collective Bargaining Agreement applicable at the location to which the work, positions, and/or employees are to be transferred will apply to the transferred work, positions, and/or employees.

3 Provisions relating to seniority of employees who transfer to the new location in connection with a Transfer of Work shall be integrated by agreement between the involved Carrier(s) and Organization(s) with disputes to be resolved by the Arbitrator. Train Service Rosters and Engine Service Rosters shall not be consolidated with each other. [Applicable to Operating Crafts Only.]

System Wide Issues

The Parties recognize that terms of Collective Bargaining Agreements applicable to a portion of a Carrier's system may give rise to operating incompatibilities or may be inconsistent with the establishment of uniform system-wide administrative procedures. Accordingly, notwithstanding any of the preceding provisions or conditions, where Collective Bargaining Agreements interfere with the Carriers' right to take the following actions, those agreements may be changed by the Carrier in the following limited circumstances:

1. to ensure a uniform payroll system, including uniform system-wide practices regarding dates for the payment of wages and/or direct deposit of paychecks;

2. to provide for uniform crew calling practices;

3. [other identified situations to be determined for each other involved craft.]

Dispute Procedures

All disputes are to be resolved in accordance with Section 4 of the New York Dock conditions.

Review Procedures

The award of an Arbitrator under this agreement shall be subject to review by the United States Court of Appeals for the District of Columbia under statutory provisions and standards applicable to review of agency adjudications

Enforcement

This agreement is enforceable in any United States District Court in whose jurisdiction the involved Carrier operates.

-3-

DATED: FEBRUARY 11,2000